

110TH CONGRESS
2D SESSION

S. 3197

A bill to amend title 11, United States Code, to exempt for a limited period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2008

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

A bill to amend title 11, United States Code, to exempt for a limited period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Guard and
3 Reservists Debt Relief Act of 2008”.

4 **SEC. 2. AMENDMENTS.**

5 Section 707(b)(2)(D) of title 11, United States Code,
6 is amended—

7 (1) in each of clauses (i) and (ii)—

8 (A) by indenting the left margins of such
9 clauses 2 ems to the right; and

10 (B) by redesignating such clauses as sub-
11 clauses (I) and (II), respectively;

12 (2) by striking “if the debtor is a disabled vet-
13 eran” and inserting the following:

14 “if—

15 “(i) the debtor is a disabled veteran”;

16 (3) by striking the period at the end and insert-
17 ing “; or”; and

18 (4) by adding at the end the following:

19 “(ii) while—

20 “(I) the debtor is—

21 “(aa) on, and during the 540-day pe-
22 riod beginning immediately after the debt-
23 or is released from, a period of active duty
24 (as defined in section 101(d)(1) of title 10)
25 of not less than 90 days; or

1 “(bb) performing, and during the
 2 540-day period beginning immediately
 3 after the debtor is no longer performing, a
 4 homeland defense activity (as defined in
 5 section 901(1) of title 32) performed for a
 6 period of not less than 90 days; and

7 “(II) if, after September 11, 2001, the
 8 debtor while a member of a reserve component
 9 of the Armed Forces or a member of the Na-
 10 tional Guard, was called to such active duty or
 11 performed such homeland defense activity.”.

12 **SEC. 3. GAO STUDY.**

13 (a) COMPTROLLER GENERAL STUDY.—Not later
 14 than 2 years after the effective date of this Act, the Comp-
 15 troller General shall complete and transmit to the Speaker
 16 of the House of Representatives and the President pro
 17 tempore of the Senate, a study of the use and the effects
 18 of the provisions of law amended (and as amended) by
 19 this Act. Such study shall address, at a minimum—

20 (1) whether and to what degree members of re-
 21 serve components of the Armed Forces and members
 22 of the National Guard avail themselves of the bene-
 23 fits of such provisions,

24 (2) whether and to what degree such members
 25 are debtors in cases under title 11 of the United

1 States Code that are substantially related to service
2 that qualifies such members for the benefits of such
3 provisions,

4 (3) whether and to what degree such members
5 are debtors in cases under such title that are materi-
6 ally related to such service, and

7 (4) the effects that the use by such members of
8 section 707(b)(2)(D) of such title, as amended by
9 this Act, has on the bankruptcy system, creditors,
10 and the debt-incurrence practices of such members.

11 (b) FACTORS.—For purposes of subsection (a)—

12 (1) a case shall be considered to be substan-
13 tially related to the service of a member of a reserve
14 component of the Armed Forces or a member of the
15 National Guard that qualifies such member for the
16 benefits of the provisions of law amended (and as
17 amended) by this Act if more than 33 percent of the
18 aggregate amount of the debts in such case is in-
19 curred as a direct or indirect result of such service,

20 (2) a case shall be considered to be materially
21 related to the service of a member of a reserve com-
22 ponent of the Armed Forces or a member of the Na-
23 tional Guard that qualifies such member for the ben-
24 efits of such provisions if more than 10 percent of
25 the aggregate amount of the debts in such case is

1 incurred as a direct or indirect result of such serv-
2 ice, and

3 (3) the term “effects” means—

4 (A) with respect to the bankruptcy system
5 and creditors—

6 (i) the number of cases under title 11
7 of the United States Code in which mem-
8 bers of reserve components of the Armed
9 Forces and members of the National
10 Guard avail themselves of the benefits of
11 such provisions,

12 (ii) the aggregate amount of debt in
13 such cases,

14 (iii) the aggregate amount of debt of
15 such members discharged in cases under
16 chapter 7 of such title,

17 (iv) the aggregate amount of debt of
18 such members in cases under chapter 7 of
19 such title as of the time such cases are
20 converted to cases under chapter 13 of
21 such title,

22 (v) the amount of resources expended
23 by the bankruptcy courts and by the bank-
24 ruptcy trustees, stated separately, in cases
25 under title 11 of the United States Code in

which such members avail themselves of
the benefits of such provisions, and

(vi) whether and to what extent there
is any indicia of abuse or potential abuse
of such provisions, and

(B) with respect to debt-incurrence prac-
tices—

(i) any increase in the average levels
of debt incurred by such members before,
during, or after such service,

(ii) any indicia of changes in debt-in-
currence practices adopted by such mem-
bers in anticipation of benefitting from
such provisions in any potential case under
such title; and

(iii) any indicia of abuse or potential
abuse of such provisions reflected in the
debt-incurrence of such members.

SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) **EFFECTIVE DATE.**—Except as provided in sub-
section (b), this Act and the amendments made by this
Act shall take effect 60 days after the date of enactment
of this Act.

(b) **APPLICATION OF AMENDMENTS.**—The amend-
ments made by this Act shall apply only with respect to

1 cases commenced under title 11 of the United States Code
2 in the 3-year period beginning on the effective date of this
3 Act.

